

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 379

Citations Affected: IC 24-3; IC 24-4-12-8; IC 34-24-1-1.

Synopsis: Tobacco products. Conference committee report for ESB 379. Restricts the shipping of cigarettes to Indiana residents. Excludes cigars and pipe tobacco from the definition of "tobacco product". Provides that a merchant other than a cigarette manufacturer may make a drop shipment of tobacco products through a distributor. Requires cigarette importers and manufacturers to obtain licenses from the alcohol and tobacco commission. Specifies to and from whom distributors, importers, manufacturers, and retailers may sell and receive cigarettes. Requires importers and manufacturers to maintain documentation concerning certain cigarette transactions. Imposes a monetary penalty for violations. Provides for public and private rights of action. Prohibits the importation for personal use of cigarettes of a manufacturer or brand family that is not listed in a certified directory. Makes technical corrections. Adds cigarettes and other tobacco products to items that may not be offered for sale at flea markets. Repeals statutes governing delivery sales of cigarettes. **(This conference committee report does the following: (1) Fixes a conflict with SEA 47-2005. (2) Removes a provision imposing a \$500 fee on licenses issued to cigarette importers or manufacturers. (3) Deletes a provision under which the failure of the attorney general to notify a distributor or stamping agent of its removal from the tobacco manufacturer or brand family directory would not relieve the distributor or stamping agent of its obligations under the law. (4) Allows certain retailers to purchase cigarettes from other retailers.)**

Effective: July 1, 2005.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 379 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 24-3-5-0.1 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2005]: **Sec. 0.1. As used in this chapter, "cigarette" has the**
- 5 **meaning set forth in IC 6-7-1-2.**
- 6 SECTION 2. IC 24-3-5-0.2 IS ADDED TO THE INDIANA CODE
- 7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
- 8 JULY 1, 2005]: **Sec. 0.2. As used in this chapter, "cigarette**
- 9 **manufacturer" means a person or an entity that does the following:**
- 10 **(1) Manufactures cigarettes.**
- 11 **(2) Does one (1) of the following:**
- 12 **(A) Participates in the Master Settlement Agreement (as**
- 13 **defined in IC 24-3-3-6) and performs the person's or entity's**
- 14 **financial obligations under the Master Settlement**
- 15 **Agreement.**
- 16 **(B) Places the applicable amount into a qualified escrow fund**
- 17 **(as defined in IC 24-3-3-7).**
- 18 **(3) Pays all applicable taxes under IC 6-7-1.**
- 19 SECTION 3. IC 24-3-5-0.3 IS ADDED TO THE INDIANA CODE
- 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
- 21 JULY 1, 2005]: **Sec. 0.3. As used in this chapter, "commission"**
- 22 **refers to the alcohol and tobacco commission created by**

1 **IC 7.1-2-1-1.**

2 SECTION 4. IC 24-3-5-1 IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter, "delivery
4 sale" means a transaction for the purchase of tobacco products in which
5 an offer to purchase tobacco products is made:

- 6 (1) electronically using a computer network (as defined in
- 7 IC 35-43-2-3);
- 8 (2) by mail; or
- 9 (3) by telephone;

10 and acceptance of the offer results in delivery of the tobacco products
11 to a named individual **or entity** at a designated address.

12 SECTION 5. IC 24-3-5-1.5 IS ADDED TO THE INDIANA CODE
13 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2005]: **Sec. 1.5. As used in this chapter, "distributor"**
15 **includes the following:**

16 **(1) A distributor as defined in IC 6-7-1-6.**

17 **(2) A distributor as defined in IC 6-7-2-2.**

18 SECTION 6. IC 24-3-5-3 IS AMENDED TO READ AS FOLLOWS
19 [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this chapter, "tobacco
20 product" has the meaning set forth in IC 7.1-6-1-3. **However, the term**
21 **does not include a cigar or pipe tobacco.**

22 SECTION 7. IC 24-3-5-4 IS AMENDED TO READ AS FOLLOWS
23 [EFFECTIVE JULY 1, 2005]: Sec. 4. **Subject to section 4.5 of this**
24 **chapter**, a merchant may not mail or ship ~~tobacco products~~ **cigarettes**
25 as part of a delivery sale unless, before mailing or shipping the ~~tobacco~~
26 ~~products~~, **cigarettes**, the merchant:

27 (1) obtains from the prospective customer a written statement
28 signed by the prospective customer under penalty of perjury:

29 (A) providing the prospective customer's address and date of
30 birth;

31 (B) advising the prospective customer that:

32 (i) signing another person's name to the statement required
33 under this subdivision may subject the person to a civil
34 monetary penalty of not more than one thousand dollars
35 (\$1,000); and

36 (ii) purchasing ~~tobacco products~~ **cigarettes** by a person less
37 than eighteen (18) years of age is a Class C infraction under
38 IC 35-46-1-10.5;

39 (C) confirming that the ~~tobacco product~~ **cigarette** order was
40 placed by the prospective customer;

41 (D) providing a warning under 15 U.S.C. 1333(a)(1); and

42 (E) stating the sale of ~~tobacco products~~ **cigarettes** by delivery
43 sale is a taxable event for purposes of IC 6-7-1; ~~and IC 6-7-2;~~

44 (2) makes a good faith effort to verify the information in the written
45 statement obtained under subdivision (1) by using a federal or
46 commercially available data base; and

47 (3) receives payment for the delivery sale by a credit or debit card
48 issued in the name of the prospective purchaser.

49 SECTION 8. IC 24-3-5-4.5 IS ADDED TO THE INDIANA CODE
50 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
51 JULY 1, 2005]: **Sec. 4.5. (a) This section applies to a merchant that**

1 is not a cigarette manufacturer.

2 (b) Except as provided in subsection (d), a merchant may not
3 mail or ship cigarettes as part of a delivery sale to an Indiana
4 resident or retailer (as defined in IC 24-3-2-2(d)) that is not a
5 distributor.

6 (c) If the commission determines that a merchant has violated
7 subsection (b):

8 (1) a distributor may not accept a shipment of cigarettes from
9 the merchant for a period, not to exceed one (1) year,
10 determined by the commission; and

11 (2) the commission may impose a civil penalty, not to exceed
12 five thousand dollars (\$5,000), on the merchant for each
13 violation of subsection (b), as determined by the commission.

14 (d) A merchant may make a drop shipment of tobacco products
15 to an Indiana resident or retailer that is billed through a
16 distributor.

17 SECTION 9. IC 24-3-5-5 IS AMENDED TO READ AS FOLLOWS
18 [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) A merchant who mails or
19 ships ~~tobacco products~~ **cigarettes** as part of a delivery sale shall:

20 (1) use a mailing or shipping service that requires the customer or
21 a person at least eighteen (18) years of age who is designated by
22 the customer to:

23 (A) sign to accept delivery of the ~~tobacco products~~ **cigarettes**;
24 and

25 (B) present a valid operator's license issued under IC 9-24-3 or
26 an identification card issued under IC 9-24-16 if the customer or
27 the customer's designee, in the opinion of the delivery agent or
28 employee of the mailing or shipping service, appears to be less
29 than twenty-seven (27) years of age;

30 (2) provide to the mailing or shipping service used under
31 subdivision (1) proof of compliance with section 6(a) of this
32 chapter; and

33 (3) include the following statement in bold type or capital letters on
34 an invoice or shipping document:

35 INDIANA LAW PROHIBITS THE MAILING OR SHIPPING
36 OF ~~TOBACCO PRODUCTS~~ **CIGARETTES** TO A PERSON
37 LESS THAN EIGHTEEN (18) YEARS OF AGE AND
38 REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

39 (b) The ~~alcohol and tobacco~~ commission may impose a civil penalty
40 of not more than one thousand dollars (\$1,000) if a mailing or shipping
41 service:

42 (1) delivers ~~tobacco products~~ **cigarettes** as part of a delivery sale
43 without first receiving proof from the merchant of compliance with
44 section 6(a) of this chapter; or

45 (2) fails to obtain a signature and proof of identification of the
46 customer or the customer's designee under subsection (a)(1).

47 The ~~alcohol and tobacco~~ commission shall deposit amounts collected
48 under this subsection into the youth tobacco education and enforcement
49 fund established by IC 7.1-6-2-6.

50 (c) The following apply to a merchant that mails or ships ~~tobacco~~
51 **products cigarettes** as part of a delivery sale without using a third party

service as required by subsection (a)(1):

(1) The merchant shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:

(A) sign to accept delivery of the ~~tobacco products~~; **cigarettes**; and

(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the merchant or the merchant's employee making the delivery, appears to be less than twenty-seven (27) years of age.

(2) The ~~alcohol and tobacco~~ commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the merchant:

(A) delivers the ~~tobacco products~~ **cigarettes** without first complying with section 6(a) of this chapter; or

(B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision (1).

The ~~alcohol and tobacco~~ commission shall deposit amounts collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 10. IC 24-3-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A merchant shall, before mailing or shipping ~~tobacco products~~ **cigarettes** as part of a delivery sale, provide the department of state revenue with a written statement containing the merchant's name, address, principal place of business, and each place of business in Indiana.

(b) A merchant who mails or ships ~~tobacco products~~ **cigarettes** as part of a delivery sale shall, not later than the tenth day of the calendar month immediately following the month in which the delivery sale occurred, file with the department of state revenue a copy of the invoice for each delivery sale to a customer in Indiana. The invoice must include the following information:

(1) The name and address of the customer to whom the ~~tobacco products~~ **cigarettes** were delivered.

(2) The brand name of the ~~tobacco products~~ **cigarettes** that were delivered to the customer.

(3) The quantity of ~~tobacco products~~ **cigarettes** that were delivered to the customer.

(c) A merchant who complies with 15 U.S.C. 376 for the delivery sale of cigarettes is considered to satisfy the requirements of this section.

SECTION 11. IC 24-3-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A merchant who delivers ~~tobacco products~~ **cigarettes** to a customer as part of a delivery sale shall:

(1) collect and pay all applicable taxes under IC 6-7-1; ~~and IC 6-7-2~~; or

(2) place a legible and conspicuous notice on the outside of the container in which the ~~tobacco products~~ **cigarettes** are shipped.

The notice shall be placed on the same side of the container as the address to which the container is shipped and must state the

following:

"If these ~~tobacco products~~ **cigarettes** have been shipped to you from a merchant located outside the state in which you reside, the merchant has under federal law reported information about the sale of these ~~tobacco products~~, **cigarettes**, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these ~~tobacco products~~, **cigarettes**."

(b) For a violation of this section the ~~alcohol and tobacco~~ commission may impose, in addition to any other remedies, civil penalties as follows:

(1) If the person has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) but not more than two thousand dollars (\$2,000).

(2) If the person has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) but not more than three thousand five hundred dollars (\$3,500).

(3) If the person has three (3) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) but not more than five thousand dollars (\$5,000).

(4) If the person has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) but not more than six thousand five hundred dollars (\$6,500).

(5) If the person has at least five (5) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000).

SECTION 12. IC 24-3-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. The ~~alcohol and tobacco~~ commission may impose a civil penalty of not more one thousand dollars (\$1,000) on a:

(1) customer who signs another person's name to a statement required under section 4(1) of this chapter; or

(2) merchant who sells ~~tobacco products~~ **cigarettes** by delivery sale to a person less than eighteen (18) years of age.

The ~~alcohol and tobacco~~ commission shall deposit amounts collected under this section into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

SECTION 13. IC 24-3-5.4-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. A person may not:

(1) affix a stamp to a package or other container of cigarettes; or

(2) sell, ~~or~~ offer or possess for sale, **or import for personal consumption** in Indiana cigarettes;

of a tobacco product manufacturer or brand family that is not listed in a directory under section 14 of this chapter.

SECTION 14. IC 24-3-5.4-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) This section applies after July 31, 2003.

(b) Not later than January 20, April 20, July 20, and October 20 of a calendar year, **or more frequently if ordered by the department, the commission, or the attorney general**, a distributor or stamping agent shall submit the following information to the department, the commission, and the attorney general:

(1) A list by brand family of the total number of cigarettes for which the distributor or stamping agent affixed stamps or otherwise paid taxes during the immediately preceding three (3) months.

(2) Any other information required by the department or the attorney general.

The distributor or stamping agent shall maintain and make available to the department, the commission, and the attorney general for a period of five (5) years all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information that the distributor or stamping agent relied on in reporting to the department, the commission, and the attorney general.

(c) The attorney general may require a distributor or a tobacco product manufacturer to submit additional information to determine whether a tobacco product manufacturer is in compliance with this chapter. The additional information may include samples of the packaging or labeling of each of the tobacco product manufacturer's brand families.

SECTION 15. IC 24-3-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 6. Contraband Cigarettes

Sec. 1. As used in this chapter, "commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.

Sec. 2. As used in this chapter, "distributor" means a distributor (as defined in IC 6-7-1-6) that holds a registration certificate issued under IC 6-7-1-16.

Sec. 3. As used in this chapter, "importer" means a person that brings cigarettes into the United States for sale or distribution.

Sec. 4. As used in this chapter, "licensed" means holding a license issued under section 9 of this chapter.

Sec. 5. As used in this chapter, "manufacturer" means a person that manufactures or otherwise produces cigarettes to be sold in the United States.

Sec. 6. As used in this chapter, "person" has the meaning set forth in IC 6-7-1-4.

Sec. 7. As used in this chapter, "retailer" means a person that sells cigarettes to a consumer. The term includes a distributor.

Sec. 8. As used in this chapter, "stamp" has the meaning set forth in IC 6-7-1-9.

Sec. 9. (a) The commission may issue or renew a license to the following applicants:

(1) An importer.

(2) A manufacturer.

The commission shall prescribe the form of an application.

(b) An importer or manufacturer that conducts business in Indiana must apply under this section for a license for the

1 importer's or manufacturer's principal place of business. An
 2 importer or manufacturer that is issued a license shall display the
 3 license at the importer's or manufacturer's principal place of
 4 business.

5 (c) The commission shall prescribe the form and duration of a
 6 license issued under this section. However, a license may not be
 7 valid for more than three (3) years from the date of issuance.

8 (d) A license issued under this section is nontransferable.

9 (e) The commission shall not issue or renew a license under this
 10 section if:

11 (1) the applicant owes at least five hundred dollars (\$500) in
 12 taxes imposed under IC 6-7-1-12;

13 (2) the commission revoked the applicant's license within two
 14 (2) years before the application;

15 (3) the applicant commits an offense under IC 6-7-1-21;

16 (4) the applicant does not comply with IC 24-3-3-12; or

17 (5) the applicant violates IC 24-3-4.

18 (f) The commission may revoke or suspend a license issued under
 19 this section if the applicant:

20 (1) is not eligible to receive or renew a license under subsection
 21 (e); or

22 (2) violates this chapter.

23 Sec. 10. (a) A distributor may apply a stamp only to cigarettes
 24 that are received from a licensed importer or licensed
 25 manufacturer.

26 (b) A distributor shall store stamped and unstamped cigarettes
 27 separately.

28 (c) A distributor may transfer unstamped cigarettes only as
 29 provided in IC 6-7-1-18.

30 Sec. 11. (a) A manufacturer or an importer may sell cigarettes in
 31 Indiana only to a distributor or a licensed importer.

32 (b) A manufacturer that sells cigarettes to a licensed importer
 33 under subsection (a) must be a licensed manufacturer.

34 (c) A distributor may sell cigarettes only to a distributor or a
 35 retailer.

36 (d) A distributor may obtain cigarettes only from another
 37 distributor, a licensed importer, or a licensed manufacturer.

38 (e) Except as provided in subsection (f), a retailer may obtain
 39 cigarettes only from a distributor.

40 (f) A retailer that is a holder of a certificate issued under
 41 IC 7.1-3-18.5 may purchase up to one thousand dollars (\$1,000) of
 42 cigarettes per week from another retailer that holds a certificate
 43 issued under IC 7.1-3-18.5.

44 Sec. 12. (a) This section does not apply to a distributor who:

45 (1) is a licensed manufacturer; and

46 (2) complies with section 13 of this chapter.

47 (b) A distributor shall report the following information for each
 48 place of business belonging to the distributor to the office of the
 49 attorney general not later than the fifteenth day of each month:

50 (1) The number and brand of cigarettes:

51 (A) distributed;

(B) shipped into Indiana; or
 (C) shipped within Indiana;
 during the immediately preceding month.

(2) The name and address of each person to which cigarettes described in subdivision (1) were distributed or shipped.

Sec. 13. (a) An importer or a manufacturer shall maintain documentation for each place of business belonging to the importer or manufacturer for each transaction other than a retail transaction with a consumer involving the sale, purchase, transfer, consignment, or receipt of cigarettes. The documentation must include:

(1) the name and address of the parties to the transaction; and

(2) the quantity by brand style of cigarettes involved in the transaction.

(b) Subject to subsection (c), an importer or a manufacturer shall preserve documentation described in subsection (a) at the place of business at which each transaction occurs.

(c) The commission may allow an importer or a manufacturer with multiple places of business to preserve documentation described in subsection (a) at a centralized location. However, the importer or manufacturer shall provide duplicate documentation at each place of business upon request by the commission.

(d) An importer or a manufacturer shall maintain documentation under this section for five (5) years from the date of the transaction.

(e) The commission may:

(1) obtain access to; and

(2) inspect at reasonable times;

the documentation maintained under this section. The commission may share the documentation with other law enforcement officials.

Sec. 14. (a) The commission may enter and inspect, without a warrant during normal business hours or with a warrant during nonbusiness hours, the facilities and records of an importer or a manufacturer.

(b) If the commission or a law enforcement officer has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this chapter, the commission or the law enforcement officer may stop and inspect the vehicle for cigarettes being transported in violation of this chapter.

Sec. 15. (a) A person who violates this chapter is liable for a civil penalty equal to the greater of:

(1) five (5) times the value of the cigarettes involved in the violation; or

(2) one thousand dollars (\$1,000).

(b) A civil penalty under this section is in addition to any other penalty imposed.

Sec. 16. (a) Either or both of the following may bring an action to prevent or restrain violations of this chapter:

(1) The attorney general or the attorney general's designee.

(2) A person that holds a valid permit under 26 U.S.C. 5712.

(b) A person that brings an action under subsection (a) shall provide notice to the attorney general of the commencement of the

action.

SECTION 16. IC 24-4-12-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) This section does not apply to a person who keeps available for public inspection a written authorization identifying that person as an authorized representative of the manufacturer or distributor of a product listed in subsection (b), if the authorization is not false, fraudulent, or fraudulently obtained.

(b) An unused property merchant may not offer at an unused property market for sale, or knowingly permit the sale of, baby food, infant formula, cosmetics, personal care products, nonprescription drugs, or medical devices, **or cigarettes or other tobacco products.**

SECTION 17. IC 34-24-1-1, AS AMENDED BY SEA 47-2005, SEC. 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(v) Dealing in a counterfeit substance (IC 35-48-4-5).

(vi) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).

(vii) Dealing in paraphernalia (IC 35-48-4-8.5).

(viii) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or

IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

~~(12) Cigarettes that are sold in violation of IC 24-3-5.2; cigarettes that a person attempts to sell in violation of IC 24-3-5.2; and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.2.~~

~~(13)~~ **(12)** Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

~~(14)~~ **(13)** Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

(b) A vehicle used by any person as a common or contract carrier in

the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 18. IC 24-3-5.2 IS REPEALED [EFFECTIVE JULY 1, 2005].

SECTION 19. [EFFECTIVE JULY 1, 2005] **Notwithstanding IC 24-3-6-12(b)(2), as added by this act, a distributor (as defined in IC 24-3-6-2, as added by this act) is not required to report the information required in IC 24-3-6-12(b)(2), as added by this act, until the later of the following:**

(1) When the attorney general becomes capable of receiving the information reported in an electronic format.

(2) July 1, 2008.

(Reference is to ESB 379 as reprinted April 6, 2005.)

Conference Committee Report
on
Engrossed Senate Bill 379

Signed by:

Senator Weatherwax
Chairperson

Representative Cherry

Senator Howard

Representative Pelath

Senate Conferees

House Conferees